

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA DEPARTMENT OF ADMINISTRATION

In the Matter of the Appeal of the
Determination of the Responsible
Authority for the Minnesota Office of
the State Auditor That Certain Data
Concerning Larry V. King are
Accurate and/or Complete.

**RECOMMENDED ORDER
PARTIALLY GRANTING AND
PARTIALLY DENYING STATE
AUDITOR'S MOTION TO DISMISS
AND GRANTING MOTION FOR
SUMMARY DISPOSITION**

The above matter is pending before the undersigned Administrative Law Judge pursuant to a Notice of and Order for Hearing issued by the Commissioner of the Department of Administration on November 21, 1997. On March 4, 1998, the Office of the State Auditor ("OSA") filed a Motion to Dismiss and Motion for Summary Disposition. On March 18, 1998, OSA filed an additional Motion to Dismiss based on an alleged lack of jurisdiction. The Petitioner, Larry V. King, did not file a response in opposition to any of these Motions. The record with respect to the Motions closed on April 6, 1998, upon receipt of the last submission from the OSA.

Nancy J. Bode, Assistant Attorney General, 445 Minnesota Street, Suite 1400, St. Paul, Minnesota 55101-2131, submitted the filings on behalf of the OSA. Larry King, 7036 Harriet Avenue South, Richfield, Minnesota 55423, has represented himself in this matter, with the assistance of his wife, Carmelle J. King.

Based upon all of the files, records, and proceedings herein, and for the reasons set forth in the attached Memorandum, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RESPECTFULLY RECOMMENDED as follows:

1. The first Motion to Dismiss filed by the OSA should be granted with respect to any attempt by Mr. King to assert a defamation claim, but denied with respect to the remainder of Mr. King's properly filed data accuracy and completeness challenge.
2. The second Motion to Dismiss filed by OSA based upon an alleged lack of jurisdiction over the OSA under the Minnesota Government Data Practices Act should be DENIED.
3. The Motion for Summary Disposition filed by the OSA should be GRANTED on all remaining issues in this matter.

Dated this 6th day of May, 1998.

BARBARA L. NEILSON
Administrative Law Judge

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of Administration will make the final decision after a review of the record. The Commissioner may adopt, reject, or modify the Recommendations contained herein. Pursuant to Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Donald A. Gemberling, Director of the Public Information Policy Analysis Division, Department of Administration, 50 Sherburne Avenue, St. Paul, Minnesota 55155, telephone (612) 296-6733, to ascertain the procedure for filing exceptions or presenting argument.

MEMORANDUM

The Government Data Practices Act (the "GDPA" or "the Act") imposes upon officials responsible for government data a duty to "establish procedures to assure that all data on individuals is accurate, complete, and current for the purposes for which it was collected."^[1] The Act provides that an individual who is the subject of data has the right to contest the accuracy or completeness of the data collected regarding the individual.^[2]

The Act vests final agency authority to determine the accuracy and completeness of disputed government data in the Commissioner of Administration.^[3] The authority of the Commissioner extends to all data maintained on individuals, regardless of whether it is "public" or "private" in nature.^[4]

Pursuant to Minn. Rule 1400.7300, subp. 5, the burden of proof in this proceeding is upon the Petitioner to prove by a preponderance of the evidence that the data is not accurate and/or complete. "Accurate" is defined in Minn. R. 1205.1500, subp. 2(A) (1997), to mean that the data in question is reasonably correct and free from error. "Complete" is defined in Minn. R. 1205.1500, subp. 2(B) (1997), to mean that the data in question reasonably reflects the history of an individual's transactions with the particular entity. Omissions in an individual's history that place the individual in a false light are not permitted.

Based upon the submissions of the parties, it appears that the underlying facts in this case are as follows. In the normal course of its operations, the Audit Division of the OSA audited the books and records of Carver County. The Audit Division referred information discovered during the audit concerning activities and practices of the Carver County Sheriff's Department to the OSA's Special Investigations Division. The Special Investigations Division thereafter conducted a further review of the activities and practices

of the Carver County Sheriff's Department. The OSA concluded that the Sheriff's Department had solicited and received funds that were used to purchase items without the approval of the Carver County Board of Commissioners, had spent only \$300 of \$4,034 in donations contributed specifically for D.A.R.E. for D.A.R.E.-related purposes, had requested reimbursement for a second deputy to attend a D.A.R.E. conference in Florida even though the Board had earlier denied a request to pay for two deputies to attend the conference, had submitted the room fees and meal expenses incurred by a non-County employee for reimbursement by the Board, and had committed other violations of law and policy. OSA published the findings of its special investigation in a Report dated October 3, 1996.^[5] The OSA recommended in the Report that "the Carver County Board review the violations outlined in this report and take appropriate action to guarantee compliance with internal controls, policies, procedures, and Minnesota law."^[6]

The OSA Report referred to Deputy Sheriff Larry King and the circumstances of his attendance at a D.A.R.E. conference in Florida. It also found that Mr. King had solicited a donation from a local Legion for funds to send a second deputy to the Florida D.A.R.E. conference and had submitted the hotel expenses of a non-County employee to the County employee as his own training expenses. On November 7, 1996, Mr. King wrote to OSA to object to Section V of the Report as inaccurate and incomplete.^[7] In a letter dated January 21, 1997, Mr. King informed the Department of Administration of his attempts to have the OSA correct the data he alleges to be inaccurate. In a letter dated January 29, 1997, the Department of Administration informed Mr. King of procedures for challenging the accuracy and completeness of data. On February 4, 1997, Mr. King wrote again to the OSA, and identified five statements he believed to be inaccurate in the OSA Report.^[8] The OSA sent a letter to Mr. King dated March 3, 1997, in which it acknowledged Mr. King's challenge to the accuracy of the OSA's report, informed him that the OSA believed the data contained in the Report to be correct, and advised him that a redacted version of his February 4, 1997, letter would be attached to each copy of the OSA Report made available to the public.^[9] Mr. King appealed the OSA determination in a letter to the Department of Administration dated May 29, 1997.

Eventually, after the exchange of further correspondence between Mr. King, OSA, and the Department of Administration and the parties' participation in a conciliation session, the present contested case proceeding was commenced on November 21, 1997. Pursuant to the First Prehearing Order, a prehearing conference was held on January 28, 1998, to discuss the issues that the parties believed to be appropriate for determination at the hearing, any anticipated discovery the parties would require prior to the hearing, the scheduling of a hearing date and location, and other matters appropriate for consideration in a prehearing conference under Minn. R. 1400.6500, subp. 1. Following the preparing conference, a Second Prehearing Order was issued on February 9, 1998, which required, among other things, that Mr. King serve and file a clarified statement of the issues for the hearing by February 18, 1998, which set forth the original language of the Report that was being challenged as inaccurate and/or incomplete, the alternative language that he recommended, and a brief description of the reasons why the change was sought, i.e., why he believed that the original language contained in the Report was inaccurate and/or incomplete. The OSA was required to file and serve a response to the clarified statement

of the issues for the hearing by March 4, 1998. Mr. King filed the requested clarification on February 18, 1998.

The OSA has filed two motions to dismiss and a motion for summary judgment. The first motion to dismiss is based upon an allegation that the present matter is, in essence, a defamation action and must, therefore, be dismissed based upon the fact that the OSA has absolute immunity from suit for alleged defamatory statements made in its reports. The second motion to dismiss asserts that the Commissioner of Administration lacks jurisdiction over the OSA to render an accuracy and completeness determination with respect to information contained in an audit report. The OSA has moved for summary disposition based upon an allegation that no genuine issues of fact remain for hearing on any issue and summary disposition is appropriate. The Administrative Law Judge sent Mr. and Ms. King and counsel for the OSA a letter on March 5, 1998, setting forth the time period for Mr. King's response to the motions and the OSA's reply brief. In the letter, the Judge explained the importance of Mr. King's response to the Motions and indicated that, if the Motions were granted, this matter would be decided in favor of the OSA, and no hearing would be held. The Judge further explained the need to provide affidavits and other supporting information in order to adequately contest the motion. Despite being sent this letter, Mr. King has not filed a response to any of the Motions.

Each of these Motions will be discussed below.

Jurisdiction over Possible Defamation Claim

In his February 4, 1997, letter, Mr. King sought changes to the Report as well as "a written apology for the slander and defamation that occurred when the local county newspapers and the Star Tribune rebroadcast [the OSA's] false information." (Emphasis in original.) In its motion to dismiss, the OSA urged dismissal of this matter because it amounts in OSA's view to a defamation action disguised as an accuracy and completeness challenge. The OSA asserts that it has absolute immunity from suit for alleged defamatory statements made in its reports, citing Alderson v. Dayton, No. CX-94-1022, 1995 W.L. 46272 (Minn. App. Feb. 7, 1995) (unpublished opinion), review denied (Minn. S.Ct. April 18, 1995).

Neither the Administrative Law Judge nor the Commissioner of Administration has jurisdiction to hear or decide claims of defamation.^[10] However, Mr. King has properly filed a data accuracy and completeness challenge, over which the Judge and the Commissioner of Administration do have jurisdiction. It is not clear that Mr. King is even attempting to raise a defamation claim in this matter. Accordingly, the Judge has determined that it is appropriate to clarify the nature of this action by stating that it is limited to a data accuracy and completeness challenge under the GDPA and may not properly include any defamation or slander claim. The OSA's motion to dismiss thus is granted with respect to any attempt by Mr. King to assert a defamation claim. It is not, however, appropriate to enter an outright dismissal of Mr. King's data accuracy and completeness challenge solely because he alluded in one of his letters to a possible defamation claim. The OSA's motion to dismiss is denied in this regard.

Jurisdiction under the Government Data Practices Act

The Minnesota Constitution provides for six executive officers in Minnesota: Auditor, Treasurer, Attorney General, Secretary of State, Governor, and Lieutenant Governor. Voters elect the State Auditor to a term of four years. The Constitution provides that the duties of the State Auditor shall be prescribed by law.^[11] The OSA asserts that the Minnesota Government Data Practices Act does not apply to constitutionally-created officers such as the State Auditor.

The OSA argues that to proceed with this hearing “would impermissibly afford an appointee of the Governor . . . supervisory authority over an elected, independent, constitutionally-created executive branch office” and that the application of the data accuracy provisions to the OSA “renders an unreasonable and absurd result, violates the Minnesota Constitution and favors private over public interests.”^[12] The OSA contends that an interpretation of Minn. Stat. § 13.04, subd. 4(a), to allow a political appointee of the Governor (the Commissioner of Administration) to revise a report issued pursuant to the State Auditor’s independent constitutional authority to inquire into the accounting and budgeting systems of a local unit of government would permit the statute to “improperly encroach upon an independent constitutional office” due to the possibility that the Commissioner could “edit” an audit report pertaining to the activities of someone close to the Governor.^[13] The OSA urges that the statute be read “so as not to do violence to the constitutionally mandated structure of the executive branch.”^[14] Relying in large part upon State ex rel. Mattson v. Kiedrowski, 391 N.W.2d 777 (Minn. 1986), the OSA argues that a proper reading of the GDPA would exclude the five constitutional officers from review for accuracy and completeness by the Commissioner of Administration, at least where core functions are the subject of the review.^[15] By analogy, the OSA argues that it would be improper and absurd to permit the Commissioner of Administration to correct opinions issued by the Office of the Attorney General in the context of an accuracy and completeness challenge.^[16]

The GDPA broadly provides that “[a]ll state agencies, political subdivisions and statewide systems shall be governed by this chapter.”^[17] The Act “establishes a presumption that government data are public and are accessible by the public for both inspection and copying unless there is federal law, a state statute, or a temporary classification of data that provides that certain data are not public.”^[18] The term “government data” is expansively defined to mean “all data collected, created, received, maintained or disseminated by any state agency, political subdivision, or statewide system regardless of its physical form, storage media or conditions of use.”^[19] The term “state agency” is defined to mean “the state, the University of Minnesota, and any office, officer, department, division, bureau, board, commission, authority, district or agency of the state.”^[20] The “responsible authority” in a state agency is obligated by the Act to “establish procedures to assure that all data on individuals is accurate, complete, and current for the purposes for which it is collected,”^[21] and individual subjects of data are given the right to “contest the accuracy or completeness of public or private data.”^[22]

No provision in the GDPA expressly exempts data maintained by the OSA from data accuracy and completeness challenges. To the contrary, the Act mentions data

maintained by the State Auditor and provides that “[d]ata relating to an audit under chapter 6 are classified under section 6.715.”^[23] The Act also contains a specific provision relating to the classification of data maintained by the Office of the Attorney General,^[24] another constitutionally-created executive branch office. In contrast, the entire judicial branch is expressly exempt from the GDPA.^[25] These provisions appear to be indicative of a legislative intent to broadly apply the Act to government data maintained within the executive branch, regardless of whether such data is maintained by an agency headed by an appointee of the Governor or by a constitutionally-created office. Accordingly, the Act contemplates that OSA data will be subject to challenges based upon an asserted lack of accuracy and completeness. If the OSA were exempted from the appeal provisions of the Act, subjects of OSA data would have no recourse under law for false or incomplete information contained in any such report. Appropriate safeguards exist under the current system. Political appointees are permitted to consider an appeal only after a record is developed and a recommendation is issued by an Administrative Law Judge, who is employed by an independent state agency and is a member of the classified service. In addition, the Commissioner’s decision is subject to appellate review in the judicial branch.

The express provisions of the GDPA provide an adequate basis for a determination that the Administrative Law Judge and the Commissioner of Administration have jurisdiction in this matter. The arguments raised by the OSA relating to the constitutionality of the data accuracy and completeness provisions of the Act are outside the subject-matter jurisdiction of the Administrative Law Judge in this matter.^[26] The OSA has preserved its constitutional arguments for any later appeal from the final administrative decision. OSA’s motion to dismiss for lack of jurisdiction must therefore be denied.

Motion for Summary Disposition

A motion for summary disposition is the administrative equivalent of a motion for summary judgment.^[27] Summary judgment is appropriate where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.^[28] The Office of Administrative Hearings has generally followed the summary judgment standards developed in judicial courts in considering motions for summary disposition regarding contested cases.^[29] Under those standards, the evidence must be viewed in the light most favorable to the non-moving party.^[30] To successfully resist a motion for summary disposition, the non-moving party must show that there are specific facts in dispute that have a bearing on the outcome of the case.^[31]

As clarified in his statement of issues filed on February 18, 1998, Mr. King seeks to challenge four portions of the OSA Report. The first challenge is made to the portion of the Report that states as follows:

To subsidize Deputy Olson’s attendance at the conference, Deputy King solicited a donation from the Chanhassen American Legion (hereinafter “Legion”). The Legion donated, from gambling funds, a \$500 check dated August 8, 1994, made payable to the Carver County D.A.R.E. Fund. The Sheriff endorsed the check and deposited it into the Reserve account.

OSA Report at 21. Mr. King maintains that this language should be changed to show that he solicited contributions from other organizations as well as from the Legion and that he was unaware that the source of the Legion's donation was gambling funds. He also contends that the Report does not provide "proof" that the donation came from gambling proceeds. The OSA maintains that it is unnecessary to refer in the Report to Mr. King seeking other donations because only the donation from the Legion is of concern in that portion of the Report.^[32] The OSA further argues that Mr. King's knowledge concerning whether the funds originated from gambling proceeds is irrelevant, since the purpose of the Report was merely to show that the Legion had improperly contributed gambling funds. The OSA provided memoranda indicating that the Legion's Club Manager told OSA staff that the funds for the \$500 check came from gambling proceeds^[33] and a copy of an unsigned letter from Mr. King to the Legion dated July 3, 1994, soliciting a \$500 contribution to send himself and another deputy to the D.A.R.E. conference.^[34]

The issue Mr. King raises is one of completeness, not accuracy. He is concerned that someone reading the Report will conclude that he knew the source of the funds and that he participated in the illegal contribution of funds. The language used in the Report does not support or preclude an inference that Mr. King knew about the source of the funds. The neutral language in the Report does not, as a matter of law, put Mr. King in a false light as to his state of knowledge regarding the Legion's contribution. Thus, even if Mr. King's allegations are true, no changes in the Report are warranted. The OSA is entitled to summary disposition with respect to Mr. King's first challenge.

The second portion of the Report challenged by Mr. King consists of the following three sentences:

The OSA has determined that the gambling funds from the Legion were provided to the Sheriff's Department in violation of Minn. Stat. ch. 349. This chapter states that net profits from gambling cannot be directly contributed to a law enforcement agency. Violation of this statute is a misdemeanor.

OSA Report at 21 (footnotes omitted). In his clarified statement, Mr. King maintains that the information was incomplete and placed him in a false light because the finding does not state that members of the Sheriff's Department were unaware of the nature of the funds received.^[35] Mr. King asserts that the language can be read to mean that he committed a misdemeanor.^[36] In its memorandum, the OSA recounted the evidence it relied upon in making the challenged finding.^[37]

There is nothing inaccurate nor incomplete about the challenged language in the Report. The finding goes solely to the nature of the funds received and makes no claim, direct or indirect, as to the state of knowledge of the persons receiving those funds. The Report accurately states that the identified conduct is a misdemeanor. The language does not indicate that anyone was convicted of an offense. Moreover, Mr. King is not the subject of the challenged data. Since no assertion is made and no conclusion is reached in the Report regarding the knowledge of the individuals who received the donation about its source, the Report does not place Mr. King in a false light.

The third portion of the Report challenged by Mr. King relates to the hotel stay at the D.A.R.E. conference in Florida. The OSA Report states as follows:

In addition, the claims for two nights hotel stay prior to the formal start of the D.A.R.E. conference is in violation of the Carver County Personnel Rules and Regulations Manual (hereinafter "Manual") which states that lodging charges for only the night prior to the formal start of the conference are reimbursable.

OSA Report at 22 (footnote omitted). In his clarified statement of issues, Mr. King requested that additional language be added to the Report to indicate that the decision to allow two nights' hotel stay was made in order to minimize the expense to the public. He asserted in prior letters that the earlier arrival enabled the two deputies to take a less expensive charter flight to Florida. Despite ample opportunity, Mr. King unfortunately failed to respond to the OSA's motion for summary disposition and has not provided any evidence in support of this claim. OSA points out that neither it nor, to its knowledge, the Carver County Accounting Department have ever received any evidence to support Mr. King's claim that costs were reduced as a result of the earlier arrival. The OSA emphasizes that there is no evidence that Deputy Olson's travel was approved in advance by the County. To the contrary, it is evident based on the information supplied by the OSA that the Carver County Board had considered sending two officers and had refused to approve that measure, but instead voted to send only one officer.^[38]

In connection with its memorandum, the OSA provided the agenda for the Florida conference. The agenda indicates that the formal opening of the conference occurred on a Tuesday.^[39] OSA also submitted the portion of the Carver County Personnel Rules and Regulations limiting lodging reimbursement to one night prior to the formal start of a conference.^[40] There is no express exception in these rules permitting employees to obtain reimbursement for extra days of lodging if it would reduce the overall cost.

The OSA has demonstrated that the language of the Report is accurate. Mr. King has not introduced any evidence to show that the use of an extra night's accommodation resulted in a reduction in costs or was approved prior to the trip. He has not shown that the Report puts him in a false light. In the absence of evidence to the contrary, there is no proper basis to conclude that the data is incomplete in this portion of the OSA report. Because no genuine issue of material fact has been shown to remain for hearing, summary disposition in favor of the OSA is appropriate with respect to Mr. King's third challenge.

The fourth and final portion of the Report challenged by Mr. King pertains to the OSA's summary of the billings for hotel rooms and meals at the Florida conference. The challenged language states as follows:

Deputy King submitted for reimbursement two separate room bills for the Clarion Plaza Hotel in Orlando for the dates July 11 through 16, 1994. Both Deputy King and Deputy Olson stayed in the same hotel room. The second hotel room charge of \$597.61 was for a non-County employee

attending the conference. This individual was invited by Deputy King and he informed this individual that the County would pay for this individual's expenses. The manual clearly states that the County will not reimburse the expenses of non-County employees. The submission of travel expenses for a non-County employee violated County policy. Further, the submission of non-County employee hotel expenses to the County by Deputy King as his own training expenses was a false claim.

Various meal claims submitted by Deputies King and Olson for attending the D.A.R.E. conference consisted of unitemized charges totaling \$138.34 with no indication of the number of persons eating. However, Deputy King did submit to the County for reimbursement at least one meal charge for three people. The submission of this lunch charge by Deputy King constituted a second false claim.

OSA Report at 23 (footnote omitted).

In his clarified statement of issues, Mr. King denied that he "invited" the non-County employee to attend at County expense, but alleged that he purposely submitted false claims for reimbursement. He alleged that the meal receipts included detailed information and should not have been characterized as "unitemized." He asserted that he was not physically present at the time that Deputy Olson and the non-County employee checked out of the hotel and alleged that he had no responsibility in authorizing the non-County employee's room charges to the County's credit card. He also contended that Deputy Olson submitted all receipts for reimbursement to the Sheriff's Department after the conference, while Mr. King was on a family vacation. Mr. King sought the inclusion of alternative language in the Report indicating that Deputy Olson authorized by his signature the payment of two separate room bills and submitted reimbursement for the two bills. He also requested that language be included in the Report stating that the non-County employee was attending the D.A.R.E. Conference as part of the National Teacher Awards involved with the D.A.R.E. program, and providing additional information about the payment arrangement for the non-County employee and meal charges. The OSA maintains that this portion of the Report is accurate and complete as written. It further contends that the changes sought by Mr. King would render the agency vulnerable to an accuracy and completeness challenge by Deputy Olson.

Mr. King challenges the hotel room charge finding because Deputy Olson initialed the hotel check-out slip. The OSA points out that the signing of the check-out slip was a mere formality and provided evidence demonstrating that it was Mr. King who signed the initial check-in document authorizing the room of the non-County employee to be billed to the County's credit card.^[41] Based upon a review of the exhibits submitted by OSA, the only inference that can be drawn is that Mr. King was the person who arranged for the non-County employee's hotel room to be charged to the County. Mr. King asserts that the non-County employee "allowed her room charge to go directly on the County's Credit Card."^[42] As a matter of law, the non-County employee could not have validly encumbered the County credit card. Mr. King's allegations do not detract from the

accuracy or completeness of the findings in the Report. Mr. King has not introduced any evidence to demonstrate that genuine issues of material fact remain for hearing on these issues.

Mr. King also challenges the finding that he invited the non-County employee to the D.A.R.E. Conference. The OSA provided an affidavit of the non-County employee in connection with this issue. In that affidavit, the non-County employee specifically avers that Mr. King invited her to the conference.^[43] In addition, as OSA argues, Mr. King's own testimony during the arbitration proceeding supports a finding that he invited the non-County employee to attend the conference.^[44] The use of the word "invited" in the Report has not been shown to be inaccurate or incomplete.

Mr. King asserts that funds solicited from other sources paid for some or all of the expenses incurred by the two deputies and the non-County employee in connection with the D.A.R.E. Conference. In response, OSA emphasizes that any funds solicited should have been deposited in the County's general fund and not segregated for independent use by the Sheriff's Department. As a matter of law, Mr. King cannot demonstrate that outside funds donated to the County were properly used to pay the expenses incurred.

Based upon Mr. King's sworn testimony at his second arbitration proceeding, it is evident that the meals of the non-County employee were, for the most part, charged to Mr. King's room.^[45] The evidence presented by Mr. King in connection with his November 7, 1996, letter to the OSA in fact shows that Mr. King authorized many of the non-County employee's meals to be billed to his room and suggests that the OSA Report should include more findings concerning the improper charging of meals.^[46] The OSA provided evidence demonstrating that the meals charged to the hotel room were not itemized and did not reflect the number of persons eating at each meal and that the bills for the room and meal expenses were paid by the County as "Training – King" on August 19, 1994.^[47]

Mr. King advances other reasons for omitting or changing the language in the Report. There has not been an adequate showing that any of the suggested revisions are necessary to render the Report accurate or complete. The additional language sought with respect to Deputy Olson's signature on check-out documents, the reasons for the non-County employee's attendance at the conference, the later receipt of a donation from the Waconia Fire Department, and Mr. King's request for reimbursement for a meal charge for which he had paid out of his own personal funds are simply irrelevant to the primary focus of the OSA Report. Mr. King's additional arguments that the Report should indicate that itemized charges were submitted and that the reimbursement of the expenses of the non-County employee was to have come from specific funds donated and paid for by the non-County employee lack any persuasive, sworn factual support in the record of this proceeding.

As the nonmoving party, Mr. King bears the burden of demonstrating that a genuine issue of material fact remains and necessitates a hearing. He has failed to bear this burden. Accordingly, the OSA is entitled to summary disposition regarding the accuracy and completeness of the fourth challenged portion of the Report.

Summary

The OSA is subject to the provisions of the GDPA, and the Administrative Law Judge and the Commissioner of Administration have jurisdiction over this matter. The Administrative Law Judge lacks authority to consider the constitutional challenge raised by the OSA. The jurisdiction of the Administrative Law Judge and the Commissioner of Administration does not extend to the tort of defamation, and any claim based on that cause of action is dismissed. OSA has introduced facts to support the accuracy and completeness of its findings in the Report. Unfortunately, Mr. King did not provide any affidavits or sworn testimony in support of his claims. In fact, he completely failed to respond to the OSA's motions despite having been sent a letter emphasizing the importance of such a response and the need for affidavit or other sworn evidence. Because Mr. King has not introduced any facts to demonstrate that genuine issues of material fact remain for hearing concerning whether the findings are either inaccurate or so incomplete as to portray Mr. King in a false light, summary disposition in favor of the OSA is appropriate.

B.L.N.

^[1] Minn. Stat. § 13.05, subd. 5 (1998).

^[2] Minn. Stat. § 13.04, subd. 4 (1998).

^[3] *Hennepin County Community Services Department v. Hale*, 470 N.W.2d 159, 164 (Minn. App. 1991).

^[4] *Id.*

^[5] OSA's Memorandum in Support of Motion to Dismiss and Motion for Summary Disposition, .Ex. 1.

^[6] *Id.* at 4.

^[7] OSA's Memorandum in Support of Motion to Dismiss and Motion for Summary Disposition, Ex. 2.

^[8] *Id.*, Ex. 3.

^[9] *Id.*, Ex. 4.

^[10] See *Gehling Auction Co.*, OAH Docket No. 8-1700-3294-2 (Report issued Aug. 11, 1989).

^[11] Minn. Const. Art. V, §§ 1 and 4.

^[12] OSA's Memorandum in Support of Second Motion to Dismiss at 2.

^[13] *Id.* at 9, 11.

^[14] *Id.* at 9.

^[15] *Id.* at 11.

^[16] *Id.* at 11-12.

^[17] Minn. Stat. § 13.01, subd. 1 (1996)

^[18] Minn. Stat. § 13.01, subd. 3 (1996).

^[19] Minn. Stat. § 13.02, subd. 7 (1996).

^[20] *Id.*, subd. 17.

^[21] Minn. Stat. § 13.05, subd. 5(1) (1996).

^[22] Minn. Stat. § 13.04, subd. 4 (1996).

^[23] Minn. Stat. § 13.99, subd. 3a (1996).

^[24] Minn. Stat. § 13.65 (1996).

^[25] Minn. Stat. § 13.90.

^[26] See, e.g., *Neeland v. Clearwater Memorial Hospital*, 257 N.W.2d 366, 369; *Holt v. State Board of Medical Examiners*, 431 N.W.2d 905, 906 (Minn. App. 1988), review denied (Minn. 1989) (administrative bodies lack subject-matter jurisdiction to decide constitutional issues).

^[27] Minn. R. 1400.5500 (K).

^[28] *Sauter v. Sauter*, 70 N.W.2d 351, 353 (Minn. 1955); *Louwagie v. Witco Chemical Corp.*, 378 N.W.2d 63, 66 (Minn. App. 1985); Minn. R. Civ. P. 56.03.

^[29] See Minn. R. 1400.6600.

^[30] *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986); *Grondahl v. Bullock*, 318 N.W.2d 240 (Minn. 1982).

^[31] *Hunt v. IBM Mid America Employees Federal*, 384 N.W.2d 853 (Minn. 1986).

^[32] OSA Summary Judgment Memorandum at 13.

^[33] OSA's Memorandum in Support of Motion to Dismiss and Motion for Summary Judgment, .Ex. 6.

^[34] *Id.*, Ex. 8.

^[35] Mr. King's Letter of February 17, 1998, at 2.

^[36] *Id.*

^[37] OSA Memorandum at 12-14.

^[38] OSA's Memorandum in Support of Motion to Dismiss and Motion for Summary Judgment, Ex. 9.

^[39] *Id.*, Ex. 14.

^[40] *Id.*, Ex. 16.

^[41] *Id.*, Exs. 2, 24, 25.

^[42] Mr. King's February 17, 1998, Letter at 4.

^[43] OSA's Memorandum in Support of Motion to Dismiss and Motion for Summary Judgment, Ex. 18.

^[44] *Id.*, Ex. 21 at 57.

^[45] *Id.*, Ex. 27 at 266-69.

^[46] *Id.*, Ex. 2.

^[47] *Id.*, Exs. 12, 28-29.